

DEPARTMENT OF COMMUNITY HEALTH
HEALTH LEGISLATION AND POLICY DEVELOPMENT
LEAD HAZARD CONTROL

Filed with the Secretary of State on

These rules become effective immediately upon filing with the Secretary of State unless adopted under sections 33, 44, or 45a(6) of 1969 PA 306. Rules adopted under these sections become effective 7 days after filing with the Secretary of State.

(By authority conferred on the department of community health by sections 2226, 5461 to 5464, 5466, 5468 to 5470, 5473a, and 5475 to 5477 of 1978 PA 368, and Executive Reorganization Order No. 1996-1, being MCL 333.2226, 333.5461 to 333.5464, 333.5466, 333.5468 to 333.5470, 333.5473a, 333.5475 to 333.5477, and 330.3101)

R 325.99102, R 325.99103, R 325.99104, R 325.99301, R 325.99304, R 325.99403, R 325.99404, R 325.99406, and R 325.99408 of the Michigan Administrative Code are amended, and R 325.99409 is added to the Code as follows:

R 325.99102 Definitions.

Rule 102. (1) As used in these rules:

(a) "EBL environmental investigation" means both of the following:

(i) A study **for case management purposes** of the living environment of 1 or more children 6 years of age or less with an elevated blood lead level performed by an EBL investigator to identify causative lead exposures.

(ii) The provision of a report by the EBL investigator explaining the results of the study and options for remediation of exposures.

(b) EBL "investigator" means a certified risk assessor who has been endorsed by the department to conduct EBL environmental investigations.

(c) **"Emergency renovation operations" means renovation activities, such as operations necessitated by non-routine failures of equipment, that were not planned but result from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard, or threatens equipment and/or property with significant damage.**

~~(e)~~ (d) "Lead hazard control activity" means a measure or set of measures which are designed or performed specifically to reduce or eliminate lead-based paint hazards in target housing and child-occupied facilities. Lead hazard control activity includes, but is not limited to, abatement, interim controls and clearance examinations.

(e) **"Pamphlet" means the US EPA's pamphlet number EPA 747-K-99-001, entitled "Protect Your Family From Lead in Your Home," or a true reproduction, or an equivalent pamphlet approved by the department.**

~~(d)~~ (f) "Renovation" means the modification of an existing residential dwelling, or

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portion thereof, that results in the disturbance of painted surfaces, unless the activity is performed as part of an abatement as defined in the act. Renovation includes, but is not limited to, the removal or modification of building components, surface preparation of painted surfaces, and window or door replacement to improve structural or operational integrity.

(g) “Renovator” means any person who performs for compensation a renovation.

(2) Unless the context dictates otherwise, terms defined in sections 5453 to 5460 of the act have the same meanings when used in these rules.

R 325.99103. Recordkeeping.

Rule 103. (1) A person who is certified by the department, the act, and these rules shall maintain all records required by the act and these rules for not less than 3 years.

(2) A ~~certified~~ person or individual who prepares a report or plan required by these rules shall maintain the report or plan for not less than 3 years, and shall provide copies of the report or plan not later than 20 business days after completion of the activity for which the report or plan was prepared to both of the following persons:

(a) The building owner.

(b) The person who contracted for the person's or individual's services, if different than the owner.

(3) A training program shall maintain the records required by these rules for not less than 3½ years at the address specified on the training program accreditation application.

R 325.99104 Enforcement actions.

Rule 104. (1) Any person who violates the act or these rules **or fails to satisfy agreed upon conditions for settlement of a violation** shall be subject to 1 or more of the following enforcement actions, as determined by the department:

(a) Notice of noncompliance.

(b) Citation.

(c) Denial of certification or accreditation.

(d) Suspension of certification or accreditation by cease operations order.

(e) Summary suspension of certification or accreditation.

(f) Revocation of certification or accreditation.

(g) Criminal sanction in accordance with section 5477 of the act.

(h) Administrative fines.

(2) The department shall consider the circumstance, extent, probability of harm, and repetitive nature of the violation to determine the degree and severity of enforcement actions taken, including administrative fines.

(3) Not later than 15 working days after receipt of a citation issued under section 5476 of the act, a person who is alleged to have violated the act or these rules may appeal the alleged violation by petitioning the department. If the appeal is not resolved as a result of a pre-hearing conference, the person who is alleged to have violated the act or these rules may then petition the department for an administrative hearing not later than 15 working days after completion of the pre-hearing conference. The department shall conduct an administrative hearing in accordance with 1969 PA 306, ~~being~~ MCL 24.201 ~~et seq.~~ A citation and associated administrative fine become final if the department does

not receive a petition for either a pre-hearing conference or an administrative hearing within the time specified in this subrule of this rule.

PART 3. CERTIFIED INDIVIDUALS AND FIRMS

R 325.99301 Lead professional certification; disciplines; third party examination.

Rule 301. (1) An individual may seek certification by the department under section 5468 of the act to engage in lead-based paint activities in the following disciplines:

- (a) Lead worker.
- (b) Lead supervisor.
- (c) Lead inspector.
- (d) Risk assessor.
- (e) Clearance technician.
- (f) Project designer.

(2) ~~An individual~~ **certified risk assessor** may seek endorsement by the department to conduct EBL environmental investigations as an EBL investigator. ~~An individual~~ **certified risk assessor** seeking endorsement under this subrule shall submit an application to the department demonstrating compliance with the requirements of R 325.99302 for EBL investigator.

(3) An individual seeking certification under subrule (1) of this rule to engage in lead-based paint activities shall pay the appropriate fees required under the act and submit an application to the department demonstrating either of the following:

(a) Compliance with the requirements of R 325.99302 for the specific discipline for which certification is sought.

(b) Possession of a valid lead-based paint certification, license, or equivalent, as determined by the department, issued by an EPA lead-based paint training and certification program, or a program that has been authorized by the EPA pursuant to 40 CFR part 745, in the specific discipline for which certification is sought, including successful completion of a third-party examination.

(4) If required by R 325.99302, an individual shall pass an appropriate third-party examination within 6 months after receiving a course completion certificate to be eligible for certification. An individual is not eligible to take the third party exam more than 3 times within the 6 months after receiving a course completion certificate.

(5) The fees for third-party certification exams shall be each of the following:

- (a) Inspector/risk assessor combination \$125.00.
- (b) All other examinations \$75.00 per discipline.

(6) An individual who fails to pass the third-party examination after 3 attempts within the 6 months after receiving a course completion certificate shall retake the appropriate initial training course from an accredited training program before reapplying for certification from the department.

(7) An individual who fails to pass the third-party examination within 3 years after completing the initial accredited training course shall retake the appropriate initial course from an accredited training program before applying for certification from the department.

(8) After an individual submits an application demonstrating that he or she meets the appropriate training, education, and experience requirements, and passes the appropriate

certification exam, the department shall issue a certification document to the individual in the specific discipline for which certification is sought. To maintain certification, an individual shall be recertified pursuant to R 325.99304.

R 325.99304 Recertification.

Rule 304. (1) In accordance with the act, a person or firm seeking to maintain certification to engage in lead abatement activities shall annually submit to the department, on forms provided by the department, all required information and pay the appropriate fees.

(2) Individuals seeking to engage in lead-based paint activities shall recertify with the department every 3 years.

(3) Persons seeking recertification under subrule (2) of this rule shall successfully complete an accredited refresher training course for the discipline for which they seek recertification, and successfully pass the third-party examination for that discipline within 6 months after completion of the training course. Individuals seeking to maintain certification as risk assessor must complete both the inspector and risk assessor refresher training courses, and pass both the inspector and risk assessor third-party examinations or a combination thereof.

(4) A person shall not be required to retake the core lead basics course in order to be eligible for recertification.

(5) Persons seeking to maintain endorsement to conduct EBL environmental investigations shall reapply to the department every 3 years.

(6) Person or persons who have failed to satisfy all agreed upon conditions for settlement of violations of the act or these rules may be denied recertification under this part.

PART 4. WORK PRACTICE STANDARDS

R 325.99403 Lead inspection.

Rule 403. (1) Only a person certified by the department as an inspector or risk assessor shall conduct an inspection. The inspector or risk assessor shall conduct the inspection according to this rule.

(2) When conducting an inspection, an inspector or risk assessor shall select the following locations according to documented methodologies and shall test the locations for the presence of lead-based paint:

(a) Each interior and exterior component that has a distinct painting history, except for components that the inspector or risk assessor determines have been replaced after 1978 or do not contain lead-based paint.

(b) In a multifamily dwelling or child-occupied facility, each component that has a distinct painting history, and in every common area, except for components that the inspector or risk assessor determines have been replaced after 1978 or do not contain lead-based paint.

(3) The certified inspector or risk assessor shall prepare an inspection report for each inspection. The report shall **be specific to the structure tested and** include all of the following information:

(a) Table of contents.

(b) A plain-language conclusions section, designed to provide easy identification of all lead hazards, shall be positioned prominently near the front of the report.

Results included in the conclusions section shall not be used to satisfy requirements for presentation of results described elsewhere in this rule. The conclusions section shall contain all of the following information in tabular format:

(i) Results of any environmental sampling that denote a positive indication of lead paint, grouped by sample methodology.

(ii) Applicable comparison standards.

(iii) Units of measurement.

(iv) A stand-alone description of each sampling location and component.

~~(a)~~ **(c) Date of each inspection.**

~~(b)~~ **(d) Address of building.**

~~(c)~~ **(e) Date of construction.**

~~(d)~~ **(f) Apartment numbers, if applicable.**

~~(e)~~ **(g) Name, address, and telephone number of the owner or owners.**

~~(f)~~ **(h) Name, signature, and certification number of each certified inspector or risk assessor, or both, conducting testing.**

~~(g)~~ **(i) Name, address, and telephone number of the certified person employing each inspector or risk assessor, or both, if applicable.**

~~(h)~~ **(j) Each testing method and device and sampling procedure employed for paint analysis, including quality control data and, if used, the serial number of any X-ray fluorescence device.**

~~(i)~~ **(k) Specific locations of each painted component tested for the presence of lead-based paint.**

~~(j)~~ **(l) The results of the inspection expressed in terms appropriate to the sampling method used.**

R 325.99404 Risk assessment.

Rule 404. (1) Only a person certified by the department as a risk assessor shall conduct a risk assessment. A risk assessor shall conduct the risk assessment according to this rule.

(2) The risk assessor shall make a visual inspection for risk assessment of a residential dwelling or child-occupied facility to locate the existence of lead-based paint hazards and assess the extent and causes of the hazards.

(3) The risk assessor shall collect background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to 1 or more children age 6 years and under.

(4) The risk assessor shall test, using documented methodologies, each surface that has deteriorated paint for the presence of lead if the surface is determined to be in poor condition and to have a distinct painting history. A risk assessor shall also test, using documented methodologies, any additional surface for the presence of lead if the surface is determined to be a potential lead-based paint hazard and to have a distinct painting history.

(5) In residential dwellings, the risk assessor shall collect the following dust samples in not less than 6 representative rooms, hallways, stairwells, or room equivalents:

(a) One dust sample from the floor of each selected room, hallway, or stairwell.

(b) One dust sample from a window sill or trough, if available, in each selected room, hallway or stairwell. Dust samples from windows shall be collected by alternating the sill and trough in each room to the extent possible.

(c) If there are less than 6 rooms, hallways, stairwells, or room equivalents in the dwelling, then the risk assessor shall sample all rooms, hallways, and stairwells.

(6) For multifamily dwellings and child-occupied facilities, the risk assessor shall collect the dust samples required in subrule (5) of this rule in each selected unit. In addition, a risk assessor shall collect window and floor dust samples in the following locations:

(a) Common areas adjacent to the sampled residential dwelling or child-occupied facility.

(b) Other common areas in the building where the risk assessor determines that 1 or more children, age 6 and under, could reasonably be expected to come into contact with dust, regardless of the current occupancy by children in the dwelling.

(7) For child-occupied facilities, the risk assessor shall collect 1 dust sample from the window sill or trough and 1 dust sample from the floor in each room, hallway, or stairwell utilized, to the extent defined by a child-occupied facility, by 1 or more children, age 6 and under; and in other common areas in the child-occupied facility where the risk assessor determines that 1 or more children, age 6 and under, could reasonably be expected to come into contact with dust to the extent defined by a child-occupied facility.

(8) The risk assessor shall collect soil samples and have the samples analyzed for lead concentrations in the all of following locations:

(a) Exterior play areas where bare soil is present.

(b) Dripline/foundation areas where bare soil is present

(c) Yard locations in addition to those described in subdivisions (a) and

(b) of this subrule where the area of bare soil exceeds 9 square feet.

(9) The risk assessor shall compare the lead levels from each sample, as determined by the approved analysis, with applicable hazard levels for lead in paint, dust and soil established in these rules. The risk assessor shall determine a lead hazard for the area represented by each sample which exceeds the hazard levels.

(10) The certified risk assessor shall prepare a risk assessment report which shall include all of the following information:

(a) Table of contents.

(b) A plain-language conclusions section designed to provide the reader with easy identification of all lead hazards shall be positioned prominently near the front of the report. Results included in the conclusions section shall not be used to satisfy requirements for presentation of results described elsewhere in this rule. The conclusions section shall contain all of the following information in tabular format:

(i) Results of any environmental sampling that denotes a lead hazard, grouped by sample methodology.

(ii) Applicable comparison standards.

(iii) Units of measurement.

(iv) A stand-alone description of each sampling location and component.

- ~~-(a)~~ (c) Date of assessment.
 - ~~-(b)~~ (d) Address of each building.
 - ~~-(c)~~ (e) Date of construction of buildings.
 - ~~-(d)~~ (f) Apartment number, if applicable.
 - ~~-(e)~~ (g) Name, address, and telephone number of each owner of each building.
 - ~~-(f)~~ (h) Name, signature, and certification identification of the certified risk assessor conducting the assessment.
 - ~~-(g)~~ (i) Name, address, and telephone number of the certified person employing each certified risk assessor, if applicable.
 - ~~-(h)~~ (j) Name, address, and telephone number of each recognized laboratory conducting analyses of collected samples.
 - ~~-(i)~~ (k) Results of the visual inspection.
 - ~~-(j)~~ (l) Testing method and sampling procedure for the paint analysis employed.
 - ~~-(k)~~ (m) Specific location of each painted component tested for the presence of lead.
 - ~~-(l)~~ (n) All data collected from on-site testing, including quality control data, and, if used, the serial number of any X-ray fluorescence device.
 - ~~-(m)~~ (o) All results of approved analysis on collected paint, soil, and dust samples.
 - ~~-(n)~~ (p) Any other sampling results.
 - ~~-(o)~~ (q) Any background information collected under subrule (3) of this rule.
 - ~~-(p)~~ (r) To the extent that they are used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint or other assessments of lead-based paint-related hazards.
 - ~~-(q)~~ (s) A description of the location, type, and severity of identified lead-based paint hazards, and any other potential lead hazards.
 - ~~-(r)~~ (t) A description of lead hazard control options for each identified lead hazard or potential hazard, and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, then the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure.
- (11) A person shall provide a written disclosure to a client of any affiliation between the person who conducts the inspection, risk assessment, or any part thereof, and the person or persons who conduct the abatement of the same property.**

R 325.99406 Lead hazard control activities.

Rule 406. (1) Only an individual who has successfully completed either of the following training courses shall conduct non-abatement lead hazard control activities:

- (a) A lead-safe work practices training course approved by HUD.
 - (b) An accredited lead abatement worker course.
- (2) Only an individual certified by the department as a lead worker, lead supervisor, or project designer shall conduct lead abatement activities.
- (3) Individuals performing lead hazard control activities shall conduct those activities according to this rule.
- (4) A certified supervisor is required for each lead hazard control project. The certified supervisor shall be at the site during all lead abatement activities, and during all setup and cleaning activities for non-abatement lead hazard control **work mandated by order of local municipality, government, or court.**

(5) The certified supervisor ~~and the certified firm employing the supervisor~~ shall ensure that all lead hazard control activities are conducted according to this rule and all other federal, state, and local requirements.

(6) A certified supervisor or project designer shall develop a written occupant protection plan for all lead hazard control projects according to the following procedures:

(a) The occupant protection plan shall be specific to each residential dwelling or child-occupied facility and be developed before the lead hazard control activities begin. The certified supervisor shall maintain the occupant protection plan at the work site during all lead hazard control activities.

(b) The occupant protection plan shall describe the measures and management procedures that shall be taken during the lead hazard control project to protect the building occupants from exposure to any lead-based paint hazards.

(c) The procedures described in the occupant protection plan shall be implemented during the lead hazard control project.

R 325.99408 Notifications; ~~pre-renovation education~~.

Rule 408. (1) Not less than 3 business days before commencing a lead hazard control activity, a person who conducts lead abatement activities shall notify the department, on forms provided by the department, regarding information the department considers necessary to conduct an unannounced site inspection, including schedule changes. The department shall approve emergency notification that is less than 3 business days in the following situations:

(a) In the case of court-ordered lead abatement.

(b) In other cases where the department waives the 3-business-day requirement to protect the health and safety of the public.

(c) In the case of an unavoidable change in a lead abatement activity that occurs less than 3 days before the activity begins.

(2) A person who conducts lead abatement activities shall not provide, in any case, the notification specified in subrule (1) of this rule less than 24 hours before commencing the activities.

(3) A person or individual who provides emergency notification shall receive confirmation of departmental approval of the emergency notification before initiating the activity.

(4) A person or individual who conducts a lead-based paint investigation shall notify the department, on forms provided by the department, regarding information the department considers necessary, by the fifteenth day of the month following the lead-based paint investigation.

(5) A training program that conducts lead training courses in any of the disciplines listed in R 325.99201, whether the courses are initial or refresher, shall notify the department, on forms provided by the department, not less than 7 calendar days before commencing training, regarding information the department considers necessary to conduct an unannounced site inspection. A training program shall also notify the department within 10 calendar days after a course is completed, on forms provided by the department, of the names of course participants and other information the department deems necessary. Training programs shall notify the department not less than 24 hours in advance of a course cancellation.

~~-(6) Not more than 60 days before commencing a renovation activity for compensation in target housing or child-occupied facility, a person performing renovation shall do both of the following:~~

~~-(a) Provide the owner of the dwelling or facility with the EPA's pamphlet number EPA 747-K-99-001, entitled "Protect Your Family From Lead in Your Home," or a true reproduction of the EPA pamphlet, or an equivalent pamphlet approved by the department. If the owner does not occupy the dwelling unit, then the person performing renovation shall also provide an adult occupant of the housing unit with the EPA pamphlet.~~

~~-(b) Obtain a written acknowledgment of receipt of the pamphlet specified in subdivision (a) of this subrule from the owner and, if applicable, the adult occupant of the unit or facility.~~

~~-(7) If the renovator is unsuccessful in obtaining a written acknowledgment from the adult occupant described in subrule (6) of this rule, then the renovator shall certify in writing all of the following:~~

~~-(a) The address of the dwelling unit described in subrule (6) of this rule.~~

~~-(b) That the pamphlet was delivered to the dwelling unit, including the date and method of delivery. If the pamphlet was delivered by mail, then the renovator shall obtain a certificate of mailing not less than 7 days before the renovation.~~

~~-(c) That the renovator was unsuccessful in obtaining a written acknowledgment from the adult occupant, including the reason for lack of success.~~

R 325.99409 Pre-renovation education.

(1) Not more than 60 days before commencing a renovation activity for compensation in target housing or child-occupied facility, the renovator shall do both of the following:

(a) Provide the owner of the dwelling or facility with US EPA pamphlet number EPA 747-K-99-001, entitled "Protect Your Family From Lead in Your Home," or a true reproduction, or an equivalent pamphlet approved by the department. If the owner does not occupy the dwelling unit, then the person performing renovation shall also provide an adult occupant of the housing unit with the pamphlet.

(b) Obtain a written acknowledgment of receipt of the pamphlet from the owner and, if applicable, the adult occupant of the unit or facility.

(2) If the renovator is unsuccessful in obtaining a written acknowledgment from the adult occupant described in subrule (1) of this rule, then the renovator shall certify in writing both of the following:

(a) The address of the dwelling unit described in subrule (1) of this rule.

(b) That the pamphlet was delivered to the dwelling unit, including the date and method of delivery. If the pamphlet was delivered by mail, then the renovator shall obtain a certificate of mailing not less than 7 days before the renovation.

(3) If the renovator, upon delivery of the pamphlet, is unsuccessful in obtaining a written acknowledgment from the adult occupant, the renovator may self-certify the delivery. The self-certification shall be written and include the reason for lack of success (for example, occupant refuses to sign, no adult occupant available), the method of delivery of the pamphlet, the signature of the renovator, and the date of signature.

(4) Not more than 60 days before commencing renovation activities in common areas of multi-family housing, the renovator shall do all of the following:

(a) Provide the owner with the pamphlet and comply with either of the following:

(i) Obtain, from the owner, a written acknowledgement that the owner has received the pamphlet.

(ii) Obtain a certificate of mailing at least 7 days prior to the renovation.

(b) Notify in writing, or ensure written notification of, each unit of the multifamily housing and make the pamphlet available upon request prior to the start of renovation. Such notification shall be accomplished by distributing written notice to each affected unit. The notice shall describe the general nature and locations of the planned renovation activities; the expected starting and ending dates; and a statement of how the occupant can obtain the pamphlet, at no charge, from the renovator.

(c) Prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation activities and to provide the pamphlet.

(d) If the scope, locations, or expected starting and ending dates of the planned renovation activities change after the initial notification, the renovator shall provide further written notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the renovator initiates work beyond that which was described in the original notification.

(5) The written acknowledgement required in this rule shall comply with all of the following:

(a) Include a statement recording the owner or occupants name and acknowledging receipt of the pamphlet prior to the start of renovation, the address of the unit undergoing renovation, the signature of the owner or occupant as applicable, and the date of signature.

(b) Be either a separate sheet or part of any written contract or service agreement for the renovation.

(c) Be written in the same language as the contract or agreement for the renovation or, in the case of owner occupied target housing, in the same language as the lease or rental agreement or the pamphlet.

(6) Renovators shall retain, and if requested, make available to the department all records necessary to demonstrate compliance with this rule for a period of 3 years following completion of the renovation activities in target housing or a child-occupied facility.

(7) The following sample language may be used for acknowledgements described in this rule:

(a) I have received a copy of the pamphlet, “Protect Your Family From Lead In Your Home”, *(or equivalent approved by the department)* informing me of the potential risk of lead hazard exposure from renovation activity to be performed in my dwelling unit. I received this pamphlet before the work began.

Printed Name and Signature

Date

Unit Address

(b) If an occupant is unavailable for signature or refuses to sign the acknowledgement of receipt of the pamphlet, then the renovator may, under subrule (3) of this rule, self-certify delivery of each instance. The following sample language may be used for self-certification:

(i) *Refusal to sign*

I certify that I have made a good faith effort to deliver the pamphlet, “Protect Your Family From Lead In Your Home,” (or approved equivalent) to the unit listed below at the dates and times indicated, and that the occupant refused to sign the acknowledgement. I further certify that I have left a copy of the pamphlet at the unit with the occupant.

Printed Name and Signature

Date

Unit Address

Attempted delivery dates and times: _____

(ii) *Unavailable for signature*

I certify that I have made a good faith effort to deliver the pamphlet, “Protect Your Family From Lead In Your Home,” (or approved equivalent) to the unit listed below at the dates and times indicated, and that the occupant was unavailable to sign the acknowledgement. I further certify that I have left a copy of the pamphlet at the unit with the occupant.

Printed Name and Signature

Date

Unit Address

Attempted delivery dates and times: _____